

**BONNIE MORA, Individually and
as parent and natural guardian of
NICOLE ROSENBERG,
ANTHONY MORA and
MARY ELIZABETH MORA,**

V.

Defendants

A

**CIVIL ACTION NO. 3:CV-08-2092
(JUDGE KOSIK)**

Defendants have filed a motion to dismiss certain claims against them, stated in Counts I through III, and Count VI of a Complaint.

In Count I through III, the Complaint asserts claims pursuant to 42 U.S.C. § 1983 in that defendants violated both the Fourth and Fourteenth Amendment to the U.S. Constitution by reason of their conduct directed against one or several named plaintiffs. Count VI states a claim under state law for intentional infliction of emotional distress.

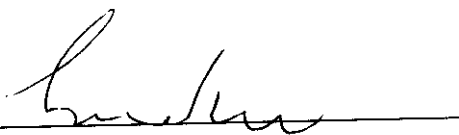
The defense only seeks to dismiss the claims under the Fourteenth Amendment in each of Counts I through III for lacking a factual basis. As to Count VI, the defense asserts that the claim is questionable under Pennsylvania law. Even if it is to be allowed, the

complaint fails to assert necessary egregious conduct to warrant the cause of action.

Without the need for elaboration, we believe if the issues raised have any merit it is premature to address them at this stage without any discovery. The very case, out of this district, which is attached to the defense reply brief addressed the Fourteenth Amendment issue on a motion for summary judgment after discovery. Regardless, it appears plaintiff relies on the Fourteenth Amendment only in the context of applying the Fourth Amendment to state related conduct. Discovery may help to sort out the differences.

The motion to dismiss is denied. Defendant should file an Answer within twenty (20) days from this Order.

SO ORDERED.


Edwin M. Kosik
United States District Judge

Dated: May 15, 2009